

MONTANA LEGISLATIVE HISTORY

Chapter 545 19 99

Bill H _____ S 372 Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 3/22 ☒ c

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Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 2/9 ☒ c

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

SB 369 Introduced by Miller *LC0999 Drafter: Niss*

Revise the Law Relating to Conversion of Group Disability Insurance and Group Hospital or Medical Service Plans;...

2/03	Introduced and 1st Reading		
2/03	Referred to Business and Industry		
2/11	Hearing		
2/16	Committee Executive Action--Bill Passed as Amended	6	0
2/16	Committee Report--Bill Passed as Amended		
2/19	2nd Reading Passed as Amended	48	0
2/20	3rd Reading Passed	48	0

	Transmitted to House		
2/22	Referred to Business and Labor		
3/12	Hearing		
3/12	Committee Executive Action--Bill Concurred	18	0
3/13	Committee Report--Bill Concurred		
3/20	2nd Reading Concurred	96	1
3/22	3rd Reading Concurred	99	1

Returned to Senate
 Sent to Enrolling
 3/23 Returned from Enrolling
 3/25 Signed by President
 3/26 Signed by Speaker
 3/29 Transmitted to Governor
 4/01 Signed by Governor
 4/06 Chapter Number Assigned
 Chapter Number 228
 Effective Date: 10/01/1999 - All Sections

SB 370 Introduced by Stang *LC1736 Drafter: Bohyer*

Allow All Municipalities and Counties, by a Vote of the Electorate, to Adopt a Local Option Sales Tax;...

1/27	Fiscal Note Needed		
2/03	Introduced and 1st Reading		
2/03	Referred to Taxation		
2/03	Fiscal Note Requested		
2/05	Fiscal Note Received		
2/06	Fiscal Note Signed		
2/06	Fiscal Note Printed		
2/12	Hearing		
3/26	Committee Executive Action--Bill Passed as Amended	7	2
3/26	Committee Report--Bill Passed as Amended		
3/27	2nd Reading Passed as Amended	30	19
3/29	3rd Reading Passed	28	22

	Transmitted to House		
3/30	Referred to Taxation		
4/08	Hearing		
4/13	Committee Executive Action--Bill Concurred as Amended	13	6
4/13	Committee Report--Bill Concurred as Amended		
4/14	2nd Reading Concur Motion Failed	44	56
4/15	Reconsidered Previous Action; Placed on 2nd Reading	55	44

4/15	Rules Suspended by Senate to Accept Late Return of Amended Bill	50	0
4/16	2nd Reading Concur as Amended Motion Failed	43	57

SB 371 Introduced by Mesaros, et al. *LC1404 Drafter: K. Williams*

Require a Person Developing a Ground Water Source of 35 Gallons a Minute or Less, When the Source Is on Another Person's Land, to Notify the Other Landowner in Advance of the Proposed Development and Appropriation;...

2/03	Introduced and 1st Reading		
2/03	Referred to Natural Resources		
2/12	Hearing		
2/15	Committee Executive Action--Bill Passed	9	0
2/15	Committee Report--Bill Passed		
2/18	2nd Reading Passed	49	0
2/19	3rd Reading Passed	48	0

	Transmitted to House		
2/20	Referred to Natural Resources		
3/10	Hearing		
3/16	Committee Executive Action--Bill Concurred	20	0
3/17	Committee Report--Bill Concurred		
3/26	2nd Reading Concurred	95	0
3/27	3rd Reading Concurred	99	0

Returned to Senate
 Sent to Enrolling
 3/29 Returned from Enrolling
 3/30 Signed by President
 3/31 Signed by Speaker
 3/31 Transmitted to Governor
 4/05 Signed by Governor
 4/06 Chapter Number Assigned
 Chapter Number 250
 Effective Date: 7/01/1999 - All Sections

SB 372 Introduced by Halligan *LC1214 Drafter: Lane*

Revise Certain Laws Relating to Termination of Marriage, Separation, and Child Custody;...

2/03	Introduced and 1st Reading		
2/03	Referred to Judiciary		
2/03	Fiscal Note Requested		
2/05	Fiscal Note Received		
2/05	Fiscal Note Signed		
2/06	Fiscal Note Printed		
2/09	Hearing		
2/15	Committee Executive Action--Bill Passed as Amended	8	0
2/16	Committee Report--Bill Passed as Amended		
2/22	2nd Reading Passed	48	1
2/23	3rd Reading Passed	48	1

	Transmitted to House		
3/02	Referred to Judiciary		
3/22	Hearing		
3/25	Committee Executive Action--Bill Concurred as Amended	14	6

3/26	Committee Report--Bill Concurred as Amended		
3/31	2nd Reading Concurred	67	32
4/01	3rd Reading Concurred	77	23
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	50	0
4/09	3rd Reading Passed as Amended by House	50	0
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/17	Signed by President		
4/20	Signed by Speaker		
4/20	Transmitted to Governor		
4/29	Signed by Governor		
5/04	Chapter Number Assigned		
	Chapter Number 545		
	Effective Date: 7/01/1999 - All Sections		

SB 373 Introduced by Ellingson, et al. *LC1585 Drafter: B. Campbell*

Prohibit an Owner of an Automated Teller Machine from Imposing a Surcharge on a Customer Who Uses the Machine;...

2/03 Introduced and 1st Reading
 2/03 Referred to Business and Industry
 2/10 Hearing
 2/11 Tabled in Committee
 3/01 Missed Deadline for General Bill Transmittal

SB 374 Introduced by Lynch, et al. *LC1273 Drafter: Kurtz*

Allow Class D Motor Carriers to Exceed Total Gross Weight Limitations by 10 Percent When Hauling Garbage on the Highway;...

12/15 Fiscal Note Needed
 2/03 Introduced and 1st Reading
 2/03 Referred to Highways and Transportation
 2/03 Fiscal Note Requested
 2/05 Fiscal Note Received
 2/05 Fiscal Note Signed
 2/06 Fiscal Note Printed
 2/09 Hearing
 2/12 Tabled in Committee
 2/17 Committee Executive Action--Bill Passed 7 4
 2/17 Committee Report--Bill Passed
 2/19 2nd Reading Passed 35 13
 2/20 3rd Reading Passed 33 15
 Transmitted to House
 2/22 Referred to Transportation
 3/12 Hearing
 3/15 Committee Executive Action--Bill Concurred 17 0
 3/15 Committee Report--Bill Concurred
 3/22 2nd Reading Concurred 63 35
 3/23 3rd Reading Concurred 55 44
 Returned to Senate
 3/24 Sent to Enrolling
 3/25 Returned from Enrolling

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Senate BILL NO. 372

INTRODUCED BY *[Signature]*

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LAWS RELATING TO TERMINATION OF MARRIAGE, SEPARATION, AND CHILD CUSTODY; PROVIDING THAT FEES FOR FILING AN AMENDMENT TO FINAL PARENTING PLANS MUST BE REFUNDED IF THE AMENDMENT IS NOT CONTESTED; PROVIDING THAT THE CLERK OF COURT NEED NOT KEEP SOCIAL SECURITY NUMBERS CONFIDENTIAL, UNLESS REQUESTED; PROVIDING THAT PARENTING PLANS BE KEPT CONFIDENTIAL ONLY UPON REQUEST; REVISING ASSET CRITERIA FOR SUMMARY DISSOLUTION PROCEDURES; ALLOWING PARTIES TO WAIVE EXCHANGE OF PRELIMINARY DISCLOSURE STATEMENTS; AMENDING SECTIONS 25-1-201, 40-4-105, 40-4-130, 40-4-204, 40-4-234, AND 40-4-252, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. (Temporary) Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, ~~a fee of \$150~~; for filing a petition for legal separation, ~~a fee of \$150~~; and for filing a petition for a contested amendment of a final parenting plan, ~~a fee of \$120~~;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, 50 cents for each year searched, not to exceed a total of \$25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other

- 1 courts, the fee for entry of judgment provided for in subsection (1)(c);
- 2 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 3 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 4 (k) for filing and entering papers received by transfer from other courts, \$10;
- 5 (l) for issuing a marriage license, \$30;
- 6 (m) on the filing of an application for informal, formal, or supervised probate or for the
- 7 appointment of a personal representative or the filing of a petition for the appointment of a guardian or
- 8 conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 9 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
- 10 of the estate of a nonresident decedent, \$55;
- 11 (o) for filing a declaration of marriage without solemnization, \$30;
- 12 (p) for filing a motion for substitution of a judge, \$100;
- 13 (q) for filing a petition for adoption, \$75.
- 14 (2) Except as provided in subsections (3) through (10), 32% of all fees collected by the clerk of
- 15 the district court must be deposited in and credited to the district court fund. If no district court fund
- 16 exists, that portion of the fees must be deposited in the general fund for district court operations. The
- 17 remaining portion of the fees must be remitted to the state general fund.
- 18 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
- 19 without solemnization, \$23.60 must be deposited in and credited to the state general fund and \$6.40
- 20 must be deposited in and credited to the county general fund.
- 21 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$75 must be
- 22 deposited in the state general fund, \$5 must be deposited in the children's trust fund account established
- 23 by 41-3-702, \$30 must be deposited in the partner and family member assault intervention and treatment
- 24 fund established by 40-15-110, and \$20 must be deposited in and credited to the district court fund. If
- 25 no district court fund exists, the \$20 must be deposited in the general fund for district court operations.
- 26 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in
- 27 the district court fund or the county general fund or remitted to the state, the clerk of the district court
- 28 shall deduct from the following fees the amounts indicated:
- 29 (i) at the commencement of each action or proceeding and for filing a complaint in intervention,
- 30 as provided in subsection (1)(a), \$35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

(iii) on the entry of judgment, as provided in subsection (1)(c), \$15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), \$15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must be remitted to the state general fund.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) (a) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

(b) If an amendment of a final parenting plan is granted by default, the clerk of the district court shall refund to the moving party the fee for filing a petition for a contested amendment of a parenting plan collected under subsection (1)(a).

(10) The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q), and \$5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations. (Terminates June 30, 1999--sec. 14, Ch. 484, L. 1997.)

25-1-201. (Effective July 1, 1999) Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

- 1 (a) at the commencement of each action or proceeding, except a petition for dissolution of
2 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
3 \$80; for filing a petition for dissolution of marriage, ~~a fee of \$120~~; for filing a petition for legal separation,
4 ~~a fee of \$120~~; and for filing a petition for a contested amendment of a final parenting plan, ~~a fee of \$120~~;
- 5 (b) from each defendant or respondent, on appearance, \$60;
- 6 (c) on the entry of judgment, from the prevailing party, \$45;
- 7 (d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five
8 pages of each file, for each request, and 25 cents for each additional page;
- 9 (e) for each certificate, with seal, \$2;
- 10 (f) for oath and jurat, with seal, \$1;
- 11 (g) for a search of court records, 50 cents for each year searched, not to exceed a total of \$25;
- 12 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other
13 courts, the fee for entry of judgment provided for in subsection (1)(c);
- 14 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 15 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 16 (k) for filing and entering papers received by transfer from other courts, \$10;
- 17 (l) for issuing a marriage license, \$30;
- 18 (m) on the filing of an application for informal, formal, or supervised probate or for the
19 appointment of a personal representative or the filing of a petition for the appointment of a guardian or
20 conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 21 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
22 of the estate of a nonresident decedent, \$55;
- 23 (o) for filing a declaration of marriage without solemnization, \$30;
- 24 (p) for filing a motion for substitution of a judge, \$100;
- 25 (q) for filing a petition for adoption, \$75.
- 26 (2) Except as provided in subsections (3) through (10), 32% of all fees collected by the clerk of
27 the district court must be deposited in and credited to the district court fund. If no district court fund
28 exists, that portion of the fees must be deposited in the general fund for district court operations. The
29 remaining portion of the fees must be remitted to the state general fund.
- 30 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage

1 without solemnization, \$23.60 must be deposited in and credited to the state general fund and \$6.40
2 must be deposited in and credited to the county general fund.

3 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$75 must be
4 deposited in the state general fund, \$5 must be deposited in the children's trust fund account established
5 by 41-3-702, and \$20 must be deposited in and credited to the district court fund. If no district court fund
6 exists, the \$20 must be deposited in the general fund for district court operations.

7 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in
8 the district court fund or the county general fund or remitted to the state, the clerk of the district court
9 shall deduct from the following fees the amounts indicated:

10 (i) at the commencement of each action or proceeding and for filing a complaint in intervention,
11 as provided in subsection (1)(a), \$35;

12 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

13 (iii) on the entry of judgment, as provided in subsection (1)(c), \$15; and

14 (iv) from the applicant or petitioner, on the filing of an application for probate or for the
15 appointment of a personal representative or on the filing of a petition for appointment of a guardian or
16 conservator, as provided in subsection (1)(m), \$15.

17 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
18 county general fund for district court operations unless the county has a district court fund. If the county
19 has a district court fund, the money must be deposited in that fund.

20 (6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must
21 be remitted to the state general fund.

22 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
23 fund. If no district court fund exists, fees must be deposited in the general fund for district court
24 operations.

25 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each
26 fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion
27 of judicial salaries.

28 (9) (a) The fee for filing a petition for a contested amendment of a parenting plan must be
29 remitted by the clerk of the district court to the credit of the district court to defray the costs of the
30 court-sanctioned educational program concerning the effects of dissolution of marriage on children, as

1 required in 40-4-226, and to defray the expense of education when ordered for the investigation and
2 preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

3 (b) If an amendment of a final parenting plan is granted by default, the clerk of the district court
4 shall refund to the moving party the fee for filing a petition for a contested amendment of a parenting plan
5 collected under subsection (1)(a).

6 (10) The clerk of district court shall remit to the credit of the special revenue account established
7 in 42-2-105 \$70 of the filing fee required in subsection (1)(q), and \$5 of the filing fee must be deposited
8 in the district court fund. If no district court fund exists, fees must be deposited in the general fund for
9 district court operations."

10

11 **Section 2.** Section 40-4-105, MCA, is amended to read:

12 **"40-4-105.** (Bracketed language terminates on occurrence of contingency or July 1, 1999)

13 **Procedure -- commencement -- pleadings -- abolition of existing defenses.** (1) The verified petition in a
14 proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably
15 broken and must set forth:

16 (a) the age, occupation, and residence of each party and the party's length of residence in this
17 state;

18 (b) the date of the marriage and the place at which it was registered;

19 (c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably
20 broken in that either:

21 (i) the parties have lived separate and apart for a period of more than 180 days preceding the
22 commencement of this proceeding; or

23 (ii) there is serious marital discord that adversely affects the attitude of one or both of the parties
24 towards the marriage, and there is no reasonable prospect of reconciliation;

25 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is
26 pregnant;

27 (e) any arrangements as to support of the children and maintenance of a spouse;

28 (f) a proposed parenting plan, if applicable; and

29 (g) the relief sought.

30 (2) Either or both parties to the marriage may initiate the proceeding.

1 (3) If a proceeding is commenced by one of the parties, the other party must be served in the
2 manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of
3 service file a verified response. A decree may not be entered until 20 days after the date of service.

4 (4) Previously existing defenses to divorce and legal separation, including but not limited to
5 condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

6 (5) The court may join additional parties proper for the exercise of its authority to implement this
7 chapter.

8 [(6) The social security number, if known, of a person subject to a decree of dissolution or a
9 support order must be recorded in the records relating to the matter. The At the request of a person
10 subject to a decree of dissolution or a support order, the recordkeeper shall keep the social security
11 number from this source confidential, except that the number may be provided to the department of
12 public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed
13 language terminates on occurrence of contingency or July 1, 1999--sec. 104, Ch. 552, L. 1997.)"

14
15 Section 3. Section 40-4-130, MCA, is amended to read:

16 "40-4-130. Summary dissolution -- conditions necessary at commencement of proceedings. A
17 marriage may be dissolved by the summary dissolution procedure specified in 40-4-130 through 40-4-136
18 if all of the following conditions exist on the date the proceeding is commenced:

19 (1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

20 (2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both
21 parties agree that the marriage should be dissolved.

22 ~~(3) There are no children from the relationship born before or during the marriage or adopted by~~
23 ~~the parties during the marriage, and the wife is not pregnant.~~

24 (3) The wife is not pregnant, the parties have executed an agreed-upon parenting plan, and the
25 child support and medical support have been determined by judicial or administrative order for all children
26 from the relationship born before or during the marriage or adopted by the parties during the marriage.

27 (4) (a) Except as provided in subsection (4)(b), neither party has any interest in real property.

28 (b) The limitation of subsection (4)(a) does not apply to the lease of a residence occupied by
29 either party if the lease does not include an option to purchase and if it terminates within 1 year from the
30 date of the filing of the petition.

1 (5) There are no unpaid, unsecured obligations in excess of ~~\$4,000~~ \$8,000 incurred by either or
2 both of the parties after the date of their marriage, ~~excluding the amount of any unpaid obligations with~~
3 ~~respect to a motor vehicle with a rated carrying load in persons and property of 1 ton or less.~~

4 (6) The total fair market value of ~~property~~ assets, excluding ~~all encumbrances and motor vehicles~~
5 ~~with a rated carrying load in persons and property of 1 ton or less~~ secured obligations, is less than
6 ~~\$13,000~~ \$25,000, and neither party has separate property assets in excess of ~~\$13,000~~, excluding all
7 ~~encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less.~~

8 (7) The parties have executed an agreement setting forth the division of assets and the
9 assumption of liabilities and have ~~duly~~ executed any documents, title certificates, bills of sale, or other
10 evidence of transfer necessary to effectuate the agreement.

11 (8) The parties waive any right to maintenance.

12 (9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their
13 respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the
14 dissolution.

15 (10) The parties have read and state that they understand the contents of the summary dissolution
16 brochure provided for in 40-4-136.

17 (11) The parties desire that the court dissolve the marriage."
18

19 Section 4. Section 40-4-204, MCA, is amended to read:

20 "40-4-204. ~~{Bracketed language terminates on occurrence of contingency or July 1, 1999}~~ Child
21 support -- orders to address health insurance -- withholding of child support. (1) In a proceeding for
22 dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both
23 parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's
24 support, without regard to marital misconduct.

25 (2) The court shall consider all relevant factors, including:

26 (a) the financial resources of the child;

27 (b) the financial resources of the parents;

28 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

29 (d) the physical and emotional condition of the child and the child's educational and medical
30 needs;

1 (e) the age of the child;

2 (f) the cost of day care for the child;

3 (g) any parenting plan that is ordered or decided upon; and

4 (h) the needs of any person, other than the child, whom either parent is legally obligated to
5 support.

6 (3) (a) Whenever a court issues or modifies an order concerning child support, the court shall
7 determine the child support obligation by applying the standards in this section and the uniform child
8 support guidelines adopted by the department of public health and human services pursuant to 40-5-209.
9 The guidelines must be used in all cases, including cases in which the order is entered upon the default
10 of a party and those in which the parties have entered into an agreement regarding the support amount.
11 A verified representation of the defaulting parent's income, based on the best information available, may
12 be used when a parent fails to provide financial information for use in applying the guidelines. The amount
13 determined under the guidelines is presumed to be an adequate and reasonable support award, unless the
14 court finds by clear and convincing evidence that the application of the standards and guidelines is unjust
15 to the child or to any of the parties or that it is inappropriate in that particular case.

16 (b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it
17 shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties
18 have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the
19 guideline amount must include a statement of the amount of support that would have ordinarily been
20 ordered under the guidelines.

21 (c) If the court does not order a parent owing a duty of support to a child to pay any amount for
22 the child's support, the court shall state its reasons for not ordering child support.

23 (d) Child support obligations established under this section are subject to the registration and
24 processing provisions of chapter 5, part 9.

25 (4) Each temporary or final district court judgment, decree, or order establishing a child support
26 obligation under this title and each modification of a final order for child support must include a medical
27 support order as provided for in Title 40, chapter 5, part 8.

28 (5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception
29 is included in the support order, a support obligation established by judgment, decree, or order under this
30 section, whether temporary or final, and each modification of an existing support obligation under

1 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40,
2 chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or
3 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless
4 subject to withholding for the payment of support without need for an amendment to the support order
5 or for any further action by the court.

6 (b) If an obligor is exempt from immediate income withholding, the district court judgment or
7 order must include a warning statement that if the obligor is delinquent in the payment of support, the
8 obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or
9 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding
10 procedures.

11 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,
12 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
13 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
14 section, the support withheld from the obligor may be retained by the obligee when it exceeds the
15 obligor's monthly support obligation if the excess support is a result of annualized withholding.

16 (d) If an obligor is exempted from paying support through income withholding, the support order
17 must include a requirement that whenever the case is receiving services under Title IV-D of the Social
18 Security Act, support payments must be paid through the department of public health and human services
19 as provided in 40-5-909.

20 (6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or
21 modifies a child support obligation must include a provision requiring the parties to promptly file with the
22 court and to update, as necessary, information on:

23 (i) the party's identity, ~~residential and mailing addresses~~ address for purposes of service,
24 ~~telephone number, {social security number,}~~ and driver's license number;

25 (ii) the name, address, and telephone number of the party's employer; and

26 (iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier
27 or health benefit plan, the policy identification number, the names of the persons covered, and any other
28 pertinent information regarding coverage or, if the child is not covered, information as to the availability
29 of coverage for the child through the party's employer.

30 (b) The court shall keep the information provided under subsection (6)(a) confidential except that

1 the information may be provided to the department of public health and human services for use in
2 administering Title IV-D of the Social Security Act.

3 (c) The order must also require that in any subsequent child support enforcement action, upon
4 sufficient showing that diligent effort has been made to ascertain the location of the party, the district
5 court or the department of public health and human services, if the department is providing services under
6 Title IV-D of the Social Security Act, may consider due process requirements for notice and service of
7 process met with respect to the party upon delivery of written notice by regular mail to the most recent
8 address of the party or the party's employer's address reported to the court.

9 (7) Each district court judgment, decree, or order establishing a final child support obligation under
10 this part and each modification of a final order for child support must contain a statement that the order
11 is subject to review and modification by the department of public health and human services upon the
12 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
13 services under Title IV-D of the Social Security Act for the enforcement of the order.

14 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support
15 obligation must include a provision requiring the child support obligation to be paid, without need for
16 further court order:

17 (i) to the person with whom the child resides by legal order;

18 (ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical
19 care and control of the child to another person, organization, or agency, to the person, organization, or
20 agency to whom physical custody has been relinquished;

21 (iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason
22 to receive or collect the child support obligation, to the person, organization, or agency having the right
23 to receive or collect the payment; or

24 (iv) to the court for the benefit of the minor child.

25 (b) When the department of public health and human services is providing services under Title
26 IV-D of the Social Security Act, payment of support must be made through the department for distribution
27 to the person, organization, or agency entitled to the payment.

28 (c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
29 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
30 or for any further action by the court.

1 (9) A judgment, decree, or order that establishes or modifies a child support obligation must
2 include a provision that if a parent or guardian is the obligee under a child support order and is obligated
3 to pay a contribution for the same child under 41-3-406, 41-5-1304, or 41-5-1512, the parent or guardian
4 assigns and transfers to the department of public health and human services all rights that the parent or
5 guardian may have to child support that are not otherwise assigned under 53-2-613. ~~(Bracketed language~~
6 ~~terminates on occurrence of contingency or July 1, 1999 sec. 104, Ch. 552, L. 1997.)"~~
7

8 Section 5. Section 40-4-234, MCA, is amended to read:

9 "40-4-234. Final parenting plan criteria. (1) In every dissolution proceeding, proceeding for
10 declaration of invalidity of marriage, parenting plan proceeding, or legal separation proceeding that
11 involves a child, each parent or both parents jointly shall submit to the court, in good faith, a proposed
12 final plan for parenting the child, which may include the allocation of parenting functions. A final parenting
13 plan must be incorporated into any final decree or amended decree, including cases of dissolution by
14 default. As used in this section, parenting functions means those aspects of the parent-child relationship
15 in which the parent makes decisions and performs functions necessary for the care and growth of the
16 child, which may include:

17 (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

18 (b) attending to the daily needs of the child, such as feeding, physical care, development, and
19 grooming, supervision, spiritual growth and development, health care, day care, and engaging in other
20 activities that are appropriate to the developmental level of the child and that are within the social and
21 economic circumstances of the particular family;

22 (c) attending to adequate education for the child, including remedial or other education essential
23 to the best interest of the child;

24 (d) ensuring the interactions and interrelationship of the child with the child's parents and siblings
25 and with any other person who significantly affects the child's best interest; and

26 (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's
27 developmental level and the family's social and economic circumstances.

28 (2) Based on the best interest of the child, a final parenting plan may include, at a minimum,
29 provisions for:

30 (a) designation of a parent as custodian of the child, solely for the purposes of all other state and

1 federal statutes that require a designation or determination of custody, but the designation may not affect
2 either parent's rights and responsibilities under the parenting plan;

3 (b) designation of the legal residence of both parents and the child, except as provided in
4 40-4-217;

5 (c) a residential schedule specifying the periods of time during which the child will reside with
6 each parent, including provisions for holidays, birthdays of family members, vacations, and other special
7 occasions;

8 (d) finances to provide for the child's needs;

9 (e) any other factors affecting the physical and emotional health and well-being of the child;

10 (f) periodic review of the parenting plan when requested by either parent or the child or when
11 circumstances arise that are foreseen by the parents as triggering a need for review, such as attainment
12 by the child of a certain age or if a change in the child's residence is necessitated;

13 (g) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including
14 contempt of court;

15 (h) allocation of parental decisionmaking authority regarding the child's:

16 (i) education;

17 (ii) spiritual development; and

18 (iii) health care and physical growth;

19 (i) the method by which future disputes concerning the child will be resolved between the
20 parents, other than court action; and

21 (j) the unique circumstances of the child or the family situation that the parents agree will
22 facilitate a meaningful, ongoing relationship between the child and parents.

23 (3) The court may in its discretion order the parties to participate in a dispute resolution process
24 to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The
25 dispute resolution process may include counseling or mediation by a specified person or agency; or court
26 action.

27 (4) Each parent may make decisions regarding the day-to-day care and control of the child while
28 the child is residing with that parent, and either parent may make emergency decisions affecting the
29 child's safety or health. When mutual decisionmaking is designated in the parenting plan but cannot be
30 achieved regarding a particular issue, the parents shall make a good faith effort to resolve the issue

1 through any dispute resolution process provided for in the final parenting plan.

2 (5) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations
3 under the parenting plan are not affected.

4 (6) The At the request of either parent or appropriate party, the court shall order that the
5 parenting plan be sealed except for access by the parents, guardian, or other person having custody of
6 the child."

7

8 Section 6. Section 40-4-252, MCA, is amended to read:

9 "40-4-252. Preliminary declaration of disclosure -- penalty. (1) Within 60 days of service of a
10 petition for dissolution or nullity of marriage or for legal separation of the parties, each party shall serve
11 on the other party a preliminary declaration of disclosure, executed under penalty of perjury. The parties
12 may, by written stipulation or by oral stipulation made in open court, agree to waive the exchange of or
13 change the time for exchange of preliminary declarations of disclosure.

14 (2) The preliminary declaration of disclosure may not be filed with the court, except on the court's
15 order.

16 (3) The preliminary declaration of disclosure must set forth with sufficient particularity, which a
17 person of reasonable and ordinary intelligence can ascertain, all of the following:

18 (a) the identity of all assets in which the declarant has or may have an interest and all liabilities
19 for which the declarant is or may be liable, regardless of the characterization of an asset or liability; and

20 (b) the declarant's percentage of ownership in each asset and percentage of obligation for each
21 liability when property is not solely owned by one or both of the parties. The preliminary declaration may
22 also set forth the declarant's characterization of each asset or liability.

23 (4) A declarant may amend the declarant's preliminary declaration of disclosure without
24 permission of the court.

25 (5) Along with the preliminary declaration of disclosure, each party shall provide the other party
26 with a completed income and expense declaration unless an income and expense declaration has already
27 been provided and is current and valid.

28 (6) In addition to any other civil or criminal remedy available under law for the commission of
29 perjury, the court may set aside the judgment, or part of the judgment, if the court discovers that a party
30 has committed perjury in the preliminary declaration of disclosure."

1
2 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

3 - END -

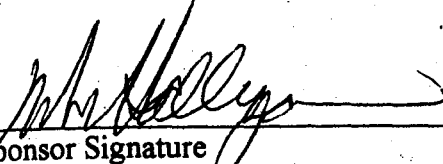
FISCAL NOTE

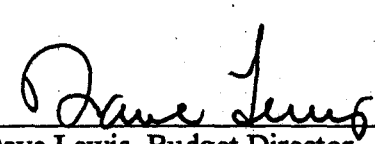
Bill #: SB0372

Title: Revise certain family laws

Primary
Sponsor: Mike Halligan

Status: As introduced

 2/5/99
Sponsor Signature Date

 2-5-99
Dave Lewis, Budget Director Date

Fiscal Summary

	<u>FY2000 Difference</u>	<u>FY2001 Difference</u>
Expenditures:	\$0	\$0
Revenue:	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. SB0372 has no fiscal impact on state government.

SB 372

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on February 9, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 41, SB 372, 2/6/1999
Executive Action: SB 16, SB 243, SB 250, SB 348

HEARING ON HB 41

Sponsor: REP. TONI HAEGNER, HD 90, HAVRE

Proponents: Chief Justice Jean Turnage
Ward Shanahan, State Bar of Montana
Larry Fasbender, Department of Justice
Mary Phippen, Montana Association of Clerks of
District Court
Pat Chenovick, Supreme Court Administrator

Closing by Sponsor:

REP. HAEGNER explained that HB 41 was introduced early in the process. Shortly after the passage of CI-75, everyone was in a panic regarding how to address legislation. They have since altered their action. When the bill was introduced, it was heard eight different times and was not particularly regarded as a tax. This system is extremely important to civil courts as well as criminal courts. It speeds up the time of action and writing of receipts. It saves litigation time.

Additional exhibit - Letter from Gregory J. Petesch, Director of Legal Services, regarding HB 41 - EXHIBIT(2) and additional written testimony, EXHIBIT(3).

{Tape : 1; Side : B; Approx. Time Counter : 9.54}

HEARING ON SB 372

Sponsor: SEN. MIKE HALLIGAN, SD 34, Missoula
Mars Scott, Child and Family Law Section of the
State Bar Association

Proponents: Mary Phippen, Montana Association of Clerks of
District Court

Opponents: None

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, presented SB 372. Fundamental changes were made in the area of family law last session. The minor changes necessary reflect how competently this was addressed last session. Changes were made from custody to parenting. A new situation was created where attorneys were required to have their clients disclose information up front. The decision was made that if a parenting plan was established, it should stay in effect for awhile. If someone frequently contests a parenting plan simply to get back at the other side, the decision has been to charge a \$120 fee for filing a contested parenting plan. The clerks of court have adopted a policy which states that unless there is a signed agreement, they have to assume that it is contested. He has brought back language that the clerks of court do not agree with. If a petition to amend the parenting plan is filed and it ends up not being contested, the fees would be refunded. The clerks do not like to refund money since they do not refund money in any other cases, except on court orders. The Family Law Section of the State Bar

Association met a few months ago to review the fundamental changes made last session.

{Tape : 1; Side : B; Approx. Time Counter : 9.57}

Proponents' Testimony:

Mars Scott, Child and Family Law Section of the State Bar Association, commented that he is the Chairman of the Legislative Subcommittee for Child and Family Law. They carefully monitored the changes made by the last legislature and polled all members around the state for their views. The changes seem to be achieving the goals of streamlining the procedures for resolving disputes in domestic relations cases and reducing the costs to the public.

Four bills were introduced last session. One bill provided for an automatic restraining order on property at the time that the summons was issued. The purpose was to put a freeze on all of the marital estate assets and to prevent the situation where someone could hide their assets or spend the money so that the ex-spouse would not receive an equitable share in the property. Another bill provided for a temporary family support option during the pendency of the case. This allowed the court to review the budget of the marital estate and to order who will be responsible for certain expenses. The parenting plan bill also passed last session. A bill has been introduced by **SEN. GRIMES** on this issue. They are happy to work with him but do believe that the current law is working very well. The last bill is the mandatory disclosure of assets and liabilities. When a divorce is filed, both parties have an affirmative duty to disclose this information as opposed to playing the guessing game.

Minor changes are made by SB 372. There is a concern that if a contested amendment is made to the parenting plan with a \$120 fee and this is won by default, the \$120 should be refunded. Section 40-4-105 contains a change. Instead of keeping social security numbers in a confidential source being a mandatory requirement, they would make this a permissive requirement. If someone wants their social security number kept confidential, they could request the court to do so. As practitioners, they are not sure whether placing a social security number into a confidential file is sufficient or whether every single document that was filed with the court that may contain a social security number must be placed in a confidential file.

The most striking change is made to §40-4-130, which addresses the summary dissolution proceedings. This would allow more people to take advantage of summary proceedings and thus not need to hire attorneys to help them with simple divorces. Under the old law to take advantage of summary proceedings, the couple

could not have any children. The amendment would allow that you could have children and take advantage of the summary proceedings if you had an agreed upon parenting plan and your child and medical support orders had been determined either by a judge or administrative order.

Under Section 5, they have increased the unsecured obligation from \$4,000 to \$8,000. Under paragraph 6, they raised the fair market value of assets, excluding secured obligations, from \$13,000 to \$25,000.

Under the child support provision, they have changed (6)(a)(i) to support confidentiality requirements on a party's identity. There are some concerns on behalf of battered spouses and potential battered spouses that too much information was given out about them. The changes would be to only have a mailing address for purposes of service.

Another change occurs in §40-4-234(6). Currently there is a requirement that every parenting plan be sealed. Not all parenting plans need to be sealed. If one of parties wants the parenting plan sealed, they can do so. Sealing every parenting plan is a burden upon the clerks of court.

In §40-4-252, under the mandatory disclosure provisions, assets and liabilities must be disclosed to the other side within 60 days. They have been told that that is a very burdensome requirement. In many marriages, the partners know their assets. The parties may mutually agree to waive this provision in writing. The mandatory disclosure at the end is still required.

{Tape : 1; Side : B; Approx. Time Counter : 10.05}

Mary Phippen, Montana Association of Clerks of District Court, presented her written testimony, EXHIBIT(4).

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. HOLDEN asked for clarification of lines 1-6, on page 8.

SEN. HALLIGAN explained that this section was not changed last session. It addresses summary dissolution which allows an easy way to get divorced. Many clients do not need attorneys in this matter. This bill would expand the provision for couples who have children but have an administrative order for health care, medical support, and child support. If their unsecured obligations are \$8,000 instead of \$4,000 and/or the secured obligations are \$25,000, they are able to use this provision.

SEN. HOLDEN asked the procedure involved. **SEN. HALLIGAN** explained that courts have some forms that show how to file a pleading. It is necessary to comply with the requirements in the form. There is a \$175 fee to file the petition. The court assumes that discovery has taken place and one or the other parties gets the dissolution. Many times both parties attend the uncontested hearing. A proposed final decree is drafted for the judge and the judge then signs the order.

SEN. HOLDEN questioned how often this is used. **SEN. HALLIGAN** believed this was used approximately 10% of the time. **Ms. Sweeney** explained that many people who come to their office would like to see justice prevail but have no method of bringing their matters before the court. They advise these people as to the procedures necessary to be followed but only give out a very few forms since they would be under the penalty of suit if they were giving out legal advice. The Attorney General has drafted a summary dissolution form. This allows joint petitioners to wait 20 days and then have their hearing in front of the judge. This includes the petition, a form to revoke the dissolution, and the final decree form.

SEN. GRIMES questioned whether, under the summary dissolution, it was necessary to have the petitioners go through the judicial or administrative process to have everything ironed out before they could get a summary dissolution. **Mr. Scott** explained that there is a variance provision within the child support guidelines that allows the parties to vary from the actual child support amount. The requirement provides that if you are going to vary from the guidelines, it is necessary that the guideline calculations be presented with the decree. In terms of a judicial order, they have found that some judges were running the child support calculations themselves. The Child Support Enforcement Division will run the calculations if a case file is opened.

SEN. BARTLETT stated that she has heard complaints regarding the disclosure of assets. Specifically, this involves the situation that the court accepts the valuation which the estranged spouse places on the assets that he or she is disclosing. She questioned whether there was a method for requiring an independent appraisal of assets if the value of the assets is disputed. **Mr. Scott** explained that the marketplace controls how the parties might proceed in a divorce action. If there is a dispute on the valuation of an asset, the disparity in the dispute will generally determine whether someone wants to hire an appraiser. There is no requirement in law that valuation be determined by any method other than what the parties would assume their assets might be worth. There is case law from the Montana Supreme Court that states that parties themselves are expert witnesses when it comes to valuing their own property.

SEN. BARTLETT questioned whether the person who contests the valuation would need to hire an appraiser. She added that this person may not have the assets to hire an appraiser. **Mr. Scott** clarified that they did make a change during the last session to §40-4-110. The old law provided for the payment of attorneys fees to the other party, if the judge so decided, after the case was completed. Currently, the parties can go into court and apply for money up front to pay attorneys, experts, and other costs of the litigation while it is in progress. The policy reason was that generally in divorces one person has a lot of money and the other person does not have access to the funds.

SEN. JABS questioned the refunding of fees regarding the contested parenting plan where the party won by default. **SEN. HALLIGAN** explained that attorneys were filing the fees under protest. Only after the judge decides that perhaps it wasn't a contested amendment, an order is issued to have the fees refunded. Ordinarily, the funds are not currently being refunded when this is not a contested plan. This is not clear for the clerks of court. The attorneys do not know if this is contested until someone files a response.

SEN. BARTLETT asked for more information regarding the dilemma faced by clerks of court in regard to the confidentiality of social security numbers. She would be reluctant to have social securities numbers public information through the court systems.

Ms. Sweeney remarked that sealing the parenting plans has created a real problem in their office. Some clerks open two separate files. One file is confidential and the other is the public file. In her office, they seal the final parenting plans. The proposed parenting plans, which many times are identical to the final parenting plans, are not sealed. They keep information separate regarding the social security number, employment, and phone numbers. She has spoken at Bar Association Meetings explaining to attorneys that the child support information needs to be contained in the decree or otherwise, when anyone but the parties request that information, it is maintained in the confidential parenting plan which can only be released to the parents or the custodians of the children.

The problem could be addressed by maintaining some of that information as confidential. One small envelope isn't as great as the storage crisis they now face. They have increased by one-third the size of the files by keeping everything separate.

Amy Pyfer, Child Support Enforcement Division (CSED), remarked that the language added in subsection (6) last session follows federal law. It states that a social security number must be in the record regarding a dissolution, a support order, or a

paternity action. This allows for privacy exceptions. There is a similar amendment in §40-4-204 which deals with the party's identity, residential and mailing addresses, telephone number, and social security number. The proposal is to strike residential and just state address for purposes of service and to delete telephone number and social security number. The language that went in last session states that the district court must require the parties to update the court with this information. It doesn't state where the information needs to be but it does state that the information needs to be provided. Currently this is provided on a case registry form that the parties complete and give to the clerk and the clerk loads this information onto their judicial case management system. It is electronically sent to their division and to Vital Statistics. As long as the information can be collected somehow, the CSED has no problem with sealing or confidentiality.

CHAIRMAN GROSFIELD asked about security with sealed documents. **Ms. Sweeney** stated that their court files are kept under key and combination in two different areas one being more secret than the other. This is kept locked over the evening hours. Their janitors need to come in on Thursdays at 4:00 to clean their area. This would vary from courthouse to courthouse. Most courthouses would have a locked, fireproof cabinet.

SEN. HALLIGAN requested that **Ms. Pyfer** explain why the judicial administrative order is needed for a summary dissolution. **Ms. Pyfer** explained that every paternity action needs to have a child support order. This order can be obtained from the district court or from the administrative agency. This section would provide the summary dissolution process to people with children. Many of the people who would be eligible for the summary dissolution process have already gone through the CSED system and would already have a support order established. While the parties could certainly agree on child support, they would not be able to finalize a divorce without an order of support. This could be adopted by the court by reference or a new order could be prepared.

{Tape : 2; Side : A; Approx. Time Counter : 10.40}

Closing by Sponsor:

SEN. HALLIGAN summarized that it was necessary to work with the clerks of court on the issue they have raised. In Missoula County, the \$120 fee generated over \$5,000 which goes to very important programs dealing with children. Regarding the social security issue, 60% to 75% of his clients wouldn't care whether their social security numbers were sealed. It would be an undue burden to require the clerks to seal every document with a social

security number. He believed that leaving this to the request of the parties would address the issue. He added that it would be necessary to address the delayed effective date. The attorney general will need to generate new forms regarding the summary dissolution so the effective date will need to be July or October.

EXECUTIVE ACTION ON SB 348

Motion: SEN. BARTLETT moved that SB 348 BE AMENDED - SB034801.avl, EXHIBIT(5).

Discussion:

SEN. BARTLETT explained that the amendment would change the words "civil offense" to "municipal infraction" in one place and changing the word "offense" to "infraction" in another place. The term "offense" is generally considered a criminal terminology and this bill tries to decriminalize the criminal codes.

Vote: The motion carried unanimously - 9-0.

Motion/Vote: SEN. BARTLETT moved that SB 348 DO PASS AS AMENDED. The motion carried unanimously - 9-0.

{Tape : 2; Side : A; Approx. Time Counter : 10.45}

EXECUTIVE ACTION ON SB 16

SEN. GRIMES reported that the Y2K Subcommittee met three times and heard from a variety of individuals who are involved in Y2K issues. This included Disaster and Emergency Services, the National Guard, and various other agencies. The private sector was not very well represented. They agreed that there should be some level of immunity for the public sector. The simplest way to address this seemed to be use the gross negligence standard. He doesn't believe that other states have gone to that extent. If a sewage system for a municipality is down or a water system is down and damage occurs as a result, this could cause problems for the municipalities if they were not provided some level of immunity.

The Subcommittee agreed to the amendments - SB001604.avl, EXHIBIT(6). Since the last Subcommittee meeting, the Hospital Association has reminded him that some hospitals are government hospitals. This would create an unequal standard unless non-profit hospitals were included.

MARY "MARTY" PHIPPEN
1920 BELT VIEW
HELENA MT 59601
406-449-6511
CELL PHONE: 406-261-9622

RE: SB 372 REVISE CERTAIN FAMILY LAWS

Mr. Chair, Members of the Committee, my name is Mary Phippen, I represent the Montana Association of Clerks of District Court.

The Association stands in support of this Bill with the inclusions of the proposed amendments which I have presented to you. The reasons for the amendments on Page 3, Lines 22 through 24 and Page 6, Lines 3 through 5, are as follows:

1. The filing fee for a petition for a contested amendment of a final parenting plan is for filing the PETITION, for a contested amendment of a parenting plan, NOT for filing the parenting plan whether or not it is contested.
2. We do NOT refund fees for filing a PETITION for dissolution of marriage nor a PETITION for legal separation when the parties settle their differences and do not follow through with a decree of dissolution or decree of separation. Nor do we refund the fee for issuance of a marriage license if the parties never proceed with the marriage. Nor do we refund filing fees for commencing an action or proceeding when the case is not contested, never proceeds to Judgment, but is asked to be dismissed by the moving party.
3. Whether an action proceeds to disposition as PETITIONED for or not, there are still administrative duties that must be followed by the clerks when a PETITION is filed to set the request of the moving party in motion. There are administrative costs in personnel, time, and supplies with every request to the Court and with every case closing whether or not the proceeding is contested.
4. The fee for filing a PETITION for a contested amendment of a parenting plan

must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements as provided in 40-4-215(2)(a). This mandate was implemented, I believe, in the last Legislative Session.

5. To start refunding filing fees because the parties settled their problems AFTER filing of requests to the Court, could create some complex bookkeeping problems. What if the fee has already been distributed as required by Statute? What if the distribution was completed in one fiscal year and the refund requested was required to be perfected in the next fiscal year? I am sure auditors would have some problems with this situation.

While we sympathize with the reasoning behind Senator Halligan's request for refunding these fees, it is for the reasons that I've listed that we feel refunding the fee is not the solution here.

For the reasons I have mentioned, we respectfully submit proposed amendments, which I have furnished to you, regarding Page 3, Lines 22 through 24, and Page 6, Lines 3 through 5, which state: "(b) If an amendment of a final parenting plan is granted by default, the moving party may be awarded the cost of the filing fee from the defaulted party for filing a petition for a contested amendment of a parenting plan collected under subsection (1)(a)."

In addition, we have one other amendment request regarding the IMMEDIATE effective date of this Act. Since the forms for Summary Dissolution proceedings are provided to the Clerks of District Court by the Attorney General's Office and because it would be impossible to receive the new forms which would reflect the changes

to Summary Dissolution procedures IMMEDIATELY upon passage and approval of this Act, we respectfully request that the Bill's effective date be amended to reflect July 1, 1999, rather than being effective on passage and approval.

With these few amendments, which we feel are justified due to bookkeeping and administrative problems, we support this Bill. Thank you.

May Pappas

AMENDMENTS TO SB 372

REQUESTED BY: THE MONTANA ASSOCIATION OF CLERKS OF
DISTRICT COURT

FOR: THE SENATE JUDICIARY COMMITTEE

PREPARED BY: THE MONTANA ASSOCIATION OF CLERKS OF DISTRICT
COURT

1. PAGE 3, LINE 22-24
FOLLOWING: (b) If an amendment of a final parenting plan is granted by default,

INSERT: the moving party may be awarded the cost of the filing fee from the defaulted party

DELETE: the clerk of the district court shall refund to the moving party the fee
2. PAGE 6, LINES 3-5

FOLLOWING: (b) If an amendment of final parenting plan is granted by default,

INSERT: the moving party may be awarded the cost of the filing fee from the defaulted party

DELETE: the clerk of the district court shall refund to the moving party the fee
3. Page 15, Line 2

FOLLOWING: Effective date. This act is effective on

INSERT: July 1, 1999.

DELETE: Passage and approval.

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 15, 1999 at 10:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Sue Bartlett (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 404, SB 416, 2/12/1999
Executive Action: HB 41, SB 153, SB 251, SB 306,
SB 416, SB 372

HEARING ON SB 404

Sponsor: SEN. WALTER MCNUTT, SD 50, Sidney

Proponents: Keith Colbo, Montana Independent Bankers
John Cadby, Montana Bankers Association

Opponents: Mike Moore, Montana Collectors Association

EXECUTIVE ACTION ON SB 416

Motion/Vote: SEN. HALLIGAN moved that SB 416 DO PASS. Motion carried unanimously, 8-0.

{Tape : 2; Side : B; Approx. Time Counter : 11.50}

EXECUTIVE ACTION ON SB 372

SEN. HALLIGAN commented that the Clerks of Court Association did not like the language proposed. The amendments, SB037201.avl, EXHIBIT(5), provide that if an agreement was signed, it was not necessary to pay the fee.

Motion/Vote: SEN. HALLIGAN moved that SB 372 BE AMENDED. Motion carried unanimously.

Motion/Vote: SEN. HALLIGAN moved that SB 372 DO PASS AS AMENDED. Motion carried unanimously, 8-0.

Amendments to Senate Bill No. 372
1st Reading Copy

Requested by Senator Mike Halligan

For the Senate Judiciary Committee

Prepared by Valencia Lane
February 11, 1999

SENATE JUDICIARY COMMITTEE
AMEND NO. 5
DATE 2-15-99
FILE NO. SB372

1. Title, line 6.

Following: "PLANS"

Strike: "MUST BE REFUNDED"

Insert: "MAY NOT BE COLLECTED"

2. Title, line 12.

Strike: "IMMEDIATE"

3. Page 3, line 22.

Following: "If"

Insert: "the moving party files a statement signed by the
nonmoving party agreeing not to contest"

Following: "plan"

Strike: "is granted by default"

Insert: "at the time the petition for amendment is filed"

4. Page 3, line 23.

Strike: "shall refund to"

Insert: "may not collect from"

5. Page 3, line 24.

Strike: "collected"

6. Page 6, line 3.

Following: "If"

Insert: "the moving party files a statement signed by the
nonmoving party agreeing not to contest"

Following: "plan"

Strike: "is granted by default"

Insert: "at the time the petition for amendment is filed"

7. Page 6, line 4.

Strike: "shall refund to"

Insert: "may not collect from"

8. Page 6, line 5.
Strike: "collected"

9. Page 10, line 23.
Following: "and"
Insert: "residential and"
Following: "addresses"
Strike: "address for purposes of service"
Insert: "addresses"

10. Page 10, line 24.
Following: "~~number,~~"
Insert: "telephone number, [social security number,]"

11. Page 15, line 2.
Strike: "on passage and approval"
Insert: "July 1, 1999"

- END -

4.5

SENATE BILL NO. 372

INTRODUCED BY M. HALLIGAN

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LAWS RELATING TO TERMINATION OF
5 MARRIAGE, SEPARATION, AND CHILD CUSTODY; PROVIDING THAT FEES FOR FILING AN AMENDMENT
6 TO FINAL PARENTING PLANS ~~MUST BE REFUNDED~~ MAY NOT BE COLLECTED IF THE AMENDMENT IS
7 NOT CONTESTED; PROVIDING THAT THE CLERK OF COURT NEED NOT KEEP SOCIAL SECURITY
8 NUMBERS CONFIDENTIAL, UNLESS REQUESTED; PROVIDING THAT PARENTING PLANS BE KEPT
9 CONFIDENTIAL ONLY UPON REQUEST; REVISING ASSET CRITERIA FOR SUMMARY DISSOLUTION
10 PROCEDURES; ALLOWING PARTIES TO WAIVE EXCHANGE OF PRELIMINARY DISCLOSURE
11 STATEMENTS; AMENDING SECTIONS 25-1-201, 40-4-105, 40-4-130, 40-4-204, 40-4-234, AND
12 40-4-252, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

SENATE BILL NO. 372

INTRODUCED BY M. HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN LAWS RELATING TO TERMINATION OF MARRIAGE, SEPARATION, AND CHILD CUSTODY; PROVIDING THAT FEES FOR FILING AN AMENDMENT TO FINAL PARENTING PLANS ~~MUST BE REFUNDED~~ MAY NOT BE COLLECTED IF THE AMENDMENT IS NOT CONTESTED; PROVIDING THAT THE CLERK OF COURT NEED NOT KEEP SOCIAL SECURITY NUMBERS CONFIDENTIAL, UNLESS REQUESTED; PROVIDING THAT PARENTING PLANS BE KEPT CONFIDENTIAL ONLY UPON REQUEST; REVISING ASSET CRITERIA FOR SUMMARY DISSOLUTION PROCEDURES; ALLOWING PARTIES TO WAIVE EXCHANGE OF PRELIMINARY DISCLOSURE STATEMENTS; AMENDING SECTIONS 25-1-201, 40-4-105, 40-4-130, 40-4-204, 40-4-234, AND 40-4-252, MCA; AND PROVIDING AN ~~IMMEDIATE~~ EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. (Temporary) Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, ~~a fee of \$150~~; for filing a petition for legal separation, ~~a fee of \$150~~; and for filing a petition for a contested amendment of a final parenting plan, ~~a fee of \$120~~;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, 50 cents for each year searched, not to exceed a total of \$25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other

- 1 courts, the fee for entry of judgment provided for in subsection (1)(c);
- 2 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 3 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 4 (k) for filing and entering papers received by transfer from other courts, \$10;
- 5 (l) for issuing a marriage license, \$30;
- 6 (m) on the filing of an application for informal, formal, or supervised probate or for the
- 7 appointment of a personal representative or the filing of a petition for the appointment of a guardian or
- 8 conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 9 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
- 10 of the estate of a nonresident decedent, \$55;
- 11 (o) for filing a declaration of marriage without solemnization, \$30;
- 12 (p) for filing a motion for substitution of a judge, \$100;
- 13 (q) for filing a petition for adoption, \$75.
- 14 (2) Except as provided in subsections (3) through (10), 32% of all fees collected by the clerk of
- 15 the district court must be deposited in and credited to the district court fund. If no district court fund
- 16 exists, that portion of the fees must be deposited in the general fund for district court operations. The
- 17 remaining portion of the fees must be remitted to the state general fund.
- 18 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
- 19 without solemnization, \$23.60 must be deposited in and credited to the state general fund and \$6.40
- 20 must be deposited in and credited to the county general fund.
- 21 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$75 must be
- 22 deposited in the state general fund, \$5 must be deposited in the children's trust fund account established
- 23 by 41-3-702, \$30 must be deposited in the partner and family member assault intervention and treatment
- 24 fund established by 40-15-110, and \$20 must be deposited in and credited to the district court fund. If
- 25 no district court fund exists, the \$20 must be deposited in the general fund for district court operations.
- 26 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in
- 27 the district court fund or the county general fund or remitted to the state, the clerk of the district court
- 28 shall deduct from the following fees the amounts indicated:
- 29 (i) at the commencement of each action or proceeding and for filing a complaint in intervention,
- 30 as provided in subsection (1)(a), \$35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

(iii) on the entry of judgment, as provided in subsection (1)(c), \$15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), \$15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must be remitted to the state general fund.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) (a) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

(b) If THE MOVING PARTY FILES A STATEMENT SIGNED BY THE NONMOVING PARTY AGREEING NOT TO CONTEST an amendment of a final parenting plan is granted by default AT THE TIME THE PETITION FOR AMENDMENT IS FILED, the clerk of the district court shall refund to MAY NOT COLLECT FROM the moving party the fee for filing a petition for a contested amendment of a parenting plan collected under subsection (1)(a).

(10) The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q), and \$5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations. (Terminates June 30, 1999--sec. 14, Ch. 484, L. 1997.)

25-1-201. (Effective July 1, 1999) Fees of clerk of district court. (1) The clerk of the district court

1 shall collect the following fees:

2 (a) at the commencement of each action or proceeding, except a petition for dissolution of
3 marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor,
4 \$80; for filing a petition for dissolution of marriage, ~~a fee of \$120~~; for filing a petition for legal separation,
5 ~~a fee of \$120~~; and for filing a petition for a contested amendment of a final parenting plan, ~~a fee of \$120~~;

6 (b) from each defendant or respondent, on appearance, \$60;

7 (c) on the entry of judgment, from the prevailing party, \$45;

8 (d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five
9 pages of each file, for each request, and 25 cents for each additional page;

10 (e) for each certificate, with seal, \$2;

11 (f) for oath and jurat, with seal, \$1;

12 (g) for a search of court records, 50 cents for each year searched, not to exceed a total of \$25;

13 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other
14 courts, the fee for entry of judgment provided for in subsection (1)(c);

15 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

16 (j) for transmission of records or files or transfer of a case to another court, \$5;

17 (k) for filing and entering papers received by transfer from other courts, \$10;

18 (l) for issuing a marriage license, \$30;

19 (m) on the filing of an application for informal, formal, or supervised probate or for the
20 appointment of a personal representative or the filing of a petition for the appointment of a guardian or
21 conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

22 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative
23 of the estate of a nonresident decedent, \$55;

24 (o) for filing a declaration of marriage without solemnization, \$30;

25 (p) for filing a motion for substitution of a judge, \$100;

26 (q) for filing a petition for adoption, \$75.

27 (2) Except as provided in subsections (3) through (10), 32% of all fees collected by the clerk of
28 the district court must be deposited in and credited to the district court fund. If no district court fund
29 exists, that portion of the fees must be deposited in the general fund for district court operations. The
30 remaining portion of the fees must be remitted to the state general fund.

1 (3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage
2 without solemnization, \$23.60 must be deposited in and credited to the state general fund and \$6.40
3 must be deposited in and credited to the county general fund.

4 (4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$75 must be
5 deposited in the state general fund, \$5 must be deposited in the children's trust fund account established
6 by 41-3-702, and \$20 must be deposited in and credited to the district court fund. If no district court fund
7 exists, the \$20 must be deposited in the general fund for district court operations.

8 (5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in
9 the district court fund or the county general fund or remitted to the state, the clerk of the district court
10 shall deduct from the following fees the amounts indicated:

11 (i) at the commencement of each action or proceeding and for filing a complaint in intervention,
12 as provided in subsection (1)(a), \$35;

13 (ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

14 (iii) on the entry of judgment, as provided in subsection (1)(c), \$15; and

15 (iv) from the applicant or petitioner, on the filing of an application for probate or for the
16 appointment of a personal representative or on the filing of a petition for appointment of a guardian or
17 conservator, as provided in subsection (1)(m), \$15.

18 (b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the
19 county general fund for district court operations unless the county has a district court fund. If the county
20 has a district court fund, the money must be deposited in that fund.

21 (6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must
22 be remitted to the state general fund.

23 (7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court
24 fund. If no district court fund exists, fees must be deposited in the general fund for district court
25 operations.

26 (8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each
27 fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion
28 of judicial salaries.

29 (9) (a) The fee for filing a petition for a contested amendment of a parenting plan must be
30 remitted by the clerk of the district court to the credit of the district court to defray the costs of the

1 court-sanctioned educational program concerning the effects of dissolution of marriage on children, as
2 required in 40-4-226, and to defray the expense of education when ordered for the investigation and
3 preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

4 (b) If THE MOVING PARTY FILES A STATEMENT SIGNED BY THE NONMOVING PARTY AGREEING NOT TO CONTEST
5 an amendment of a final parenting plan is granted by default AT THE TIME THE PETITION FOR AMENDMENT IS
6 FILED, the clerk of the district court shall refund to MAY NOT COLLECT FROM the moving party the fee for
7 filing a petition for a contested amendment of a parenting plan collected under subsection (1)(a).

8 (10) The clerk of district court shall remit to the credit of the special revenue account established
9 in 42-2-105 \$70 of the filing fee required in subsection (1)(q), and \$5 of the filing fee must be deposited
10 in the district court fund. If no district court fund exists, fees must be deposited in the general fund for
11 district court operations."

12

13 Section 2. Section 40-4-105, MCA, is amended to read:

14 "40-4-105. (Bracketed language terminates on occurrence of contingency or July 1, 1999)
15 Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) The verified petition in a
16 proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably
17 broken and must set forth:

18 (a) the age, occupation, and residence of each party and the party's length of residence in this
19 state;

20 (b) the date of the marriage and the place at which it was registered;

21 (c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably
22 broken in that either:

23 (i) the parties have lived separate and apart for a period of more than 180 days preceding the
24 commencement of this proceeding; or

25 (ii) there is serious marital discord that adversely affects the attitude of one or both of the parties
26 towards the marriage, and there is no reasonable prospect of reconciliation;

27 (d) the names, ages, and addresses of all living children of the marriage and whether the wife is
28 pregnant;

29 (e) any arrangements as to support of the children and maintenance of a spouse;

30 (f) a proposed parenting plan, if applicable; and

1 (g) the relief sought.

2 (2) Either or both parties to the marriage may initiate the proceeding.

3 (3) If a proceeding is commenced by one of the parties, the other party must be served in the
4 manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of
5 service file a verified response. A decree may not be entered until 20 days after the date of service.

6 (4) Previously existing defenses to divorce and legal separation, including but not limited to
7 condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

8 (5) The court may join additional parties proper for the exercise of its authority to implement this
9 chapter.

10 [(6) The social security number, if known, of a person subject to a decree of dissolution or a
11 support order must be recorded in the records relating to the matter. The At the request of a person
12 subject to a decree of dissolution or a support order, the recordkeeper shall keep the social security
13 number from this source confidential, except that the number may be provided to the department of
14 public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed
15 language terminates on occurrence of contingency or July 1, 1999--sec. 104, Ch. 552, L. 1997.)"

16
17 **Section 3.** Section 40-4-130, MCA, is amended to read:

18 "**40-4-130. Summary dissolution -- conditions necessary at commencement of proceedings.** A
19 marriage may be dissolved by the summary dissolution procedure specified in 40-4-130 through 40-4-136
20 if all of the following conditions exist on the date the proceeding is commenced:

21 (1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

22 (2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both
23 parties agree that the marriage should be dissolved.

24 ~~(3) There are no children from the relationship born before or during the marriage or adopted by~~
25 ~~the parties during the marriage, and the wife is not pregnant.~~

26 (3) The wife is not pregnant, the parties have executed an agreed-upon parenting plan, and the
27 child support and medical support have been determined by judicial or administrative order for all children
28 from the relationship born before or during the marriage or adopted by the parties during the marriage.

29 (4) (a) Except as provided in subsection (4)(b), neither party has any interest in real property.

30 (b) The limitation of subsection (4)(a) does not apply to the lease of a residence occupied by

1 either party if the lease does not include an option to purchase and if it terminates within 1 year from the
2 date of the filing of the petition.

3 (5) There are no unpaid, unsecured obligations in excess of ~~\$4,000~~ \$8,000 incurred by either or
4 both of the parties after the date of their marriage, ~~excluding the amount of any unpaid obligations with~~
5 ~~respect to a motor vehicle with a rated carrying load in persons and property of 1 ton or less.~~

6 (6) The total fair market value of ~~property~~ assets, excluding ~~all encumbrances and motor vehicles~~
7 ~~with a rated carrying load in persons and property of 1 ton or less~~ secured obligations, is less than
8 ~~\$13,000~~ \$25,000, and neither party has separate property assets in excess of ~~\$13,000~~, excluding all
9 encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less.

10 (7) The parties have executed an agreement setting forth the division of assets and the
11 assumption of liabilities and have ~~duly~~ executed any documents, title certificates, bills of sale, or other
12 evidence of transfer necessary to effectuate the agreement.

13 (8) The parties waive any right to maintenance.

14 (9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their
15 respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the
16 dissolution.

17 (10) The parties have read and state that they understand the contents of the summary dissolution
18 brochure provided for in 40-4-136.

19 (11) The parties desire that the court dissolve the marriage."
20

21 Section 4. Section 40-4-204, MCA, is amended to read:

22 "40-4-204. ~~{Bracketed language terminates on occurrence of contingency or July 1, 1999}~~ Child
23 support -- orders to address health insurance -- withholding of child support. (1) In a proceeding for
24 dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both
25 parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's
26 support, without regard to marital misconduct.

27 (2) The court shall consider all relevant factors, including:

28 (a) the financial resources of the child;

29 (b) the financial resources of the parents;

30 (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the age of the child;

(f) the cost of day care for the child;

(g) any parenting plan that is ordered or decided upon; and

(h) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception

1 is included in the support order, a support obligation established by judgment, decree, or order under this
2 section, whether temporary or final, and each modification of an existing support obligation under
3 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40,
4 chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or
5 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless
6 subject to withholding for the payment of support without need for an amendment to the support order
7 or for any further action by the court.

8 (b) If an obligor is exempt from immediate income withholding, the district court judgment or
9 order must include a warning statement that if the obligor is delinquent in the payment of support, the
10 obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or
11 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding
12 procedures.

13 (c) If a support order subject to income withholding is expressed in terms of a monthly obligation,
14 the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's
15 regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this
16 section, the support withheld from the obligor may be retained by the obligee when it exceeds the
17 obligor's monthly support obligation if the excess support is a result of annualized withholding.

18 (d) If an obligor is exempted from paying support through income withholding, the support order
19 must include a requirement that whenever the case is receiving services under Title IV-D of the Social
20 Security Act, support payments must be paid through the department of public health and human services
21 as provided in 40-5-909.

22 (6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or
23 modifies a child support obligation must include a provision requiring the parties to promptly file with the
24 court and to update, as necessary, information on:

25 (i) the party's identity, ~~residential and~~ RESIDENTIAL AND mailing ~~addresses~~ address for purposes of
26 service ADDRESSES, telephone number, [social security number,] TELEPHONE NUMBER, [SOCIAL SECURITY
27 NUMBER,] and driver's license number;

28 (ii) the name, address, and telephone number of the party's employer; and

29 (iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier
30 or health benefit plan, the policy identification number, the names of the persons covered, and any other

1 pertinent information regarding coverage or, if the child is not covered, information as to the availability
2 of coverage for the child through the party's employer.

3 (b) The court shall keep the information provided under subsection (6)(a) confidential except that
4 the information may be provided to the department of public health and human services for use in
5 administering Title IV-D of the Social Security Act.

6 (c) The order must also require that in any subsequent child support enforcement action, upon
7 sufficient showing that diligent effort has been made to ascertain the location of the party, the district
8 court or the department of public health and human services, if the department is providing services under
9 Title IV-D of the Social Security Act, may consider due process requirements for notice and service of
10 process met with respect to the party upon delivery of written notice by regular mail to the most recent
11 address of the party or the party's employer's address reported to the court.

12 (7) Each district court judgment, decree, or order establishing a final child support obligation under
13 this part and each modification of a final order for child support must contain a statement that the order
14 is subject to review and modification by the department of public health and human services upon the
15 request of the department or a party under 40-5-271 through 40-5-273 when the department is providing
16 services under Title IV-D of the Social Security Act for the enforcement of the order.

17 (8) (a) A district court judgment, decree, or order that establishes or modifies a child support
18 obligation must include a provision requiring the child support obligation to be paid, without need for
19 further court order:

20 (i) to the person with whom the child resides by legal order;

21 (ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical
22 care and control of the child to another person, organization, or agency, to the person, organization, or
23 agency to whom physical custody has been relinquished;

24 (iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason
25 to receive or collect the child support obligation, to the person, organization, or agency having the right
26 to receive or collect the payment; or

27 (iv) to the court for the benefit of the minor child.

28 (b) When the department of public health and human services is providing services under Title
29 IV-D of the Social Security Act, payment of support must be made through the department for distribution
30 to the person, organization, or agency entitled to the payment.

1 (c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject
2 to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order
3 or for any further action by the court.

4 (9) A judgment, decree, or order that establishes or modifies a child support obligation must
5 include a provision that if a parent or guardian is the obligee under a child support order and is obligated
6 to pay a contribution for the same child under 41-3-406, 41-5-1304, or 41-5-1512, the parent or guardian
7 assigns and transfers to the department of public health and human services all rights that the parent or
8 guardian may have to child support that are not otherwise assigned under 53-2-613. ~~(Bracketed language~~
9 ~~terminates on occurrence of contingency or July 1, 1999 sec. 104, Ch. 552, L. 1997.)"~~

10

11 Section 5. Section 40-4-234, MCA, is amended to read:

12 "40-4-234. Final parenting plan criteria. (1) In every dissolution proceeding, proceeding for
13 declaration of invalidity of marriage, parenting plan proceeding, or legal separation proceeding that
14 involves a child, each parent or both parents jointly shall submit to the court, in good faith, a proposed
15 final plan for parenting the child, which may include the allocation of parenting functions. A final parenting
16 plan must be incorporated into any final decree or amended decree, including cases of dissolution by
17 default. As used in this section, parenting functions means those aspects of the parent-child relationship
18 in which the parent makes decisions and performs functions necessary for the care and growth of the
19 child, which may include:

20 (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

21 (b) attending to the daily needs of the child, such as feeding, physical care, development, and
22 grooming, supervision, spiritual growth and development, health care, day care, and engaging in other
23 activities that are appropriate to the developmental level of the child and that are within the social and
24 economic circumstances of the particular family;

25 (c) attending to adequate education for the child, including remedial or other education essential
26 to the best interest of the child;

27 (d) ensuring the interactions and interrelationship of the child with the child's parents and siblings
28 and with any other person who significantly affects the child's best interest; and

29 (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's
30 developmental level and the family's social and economic circumstances.

(2) Based on the best interest of the child, a final parenting plan may include, at a minimum, provisions for:

(a) designation of a parent as custodian of the child, solely for the purposes of all other state and federal statutes that require a designation or determination of custody, but the designation may not affect either parent's rights and responsibilities under the parenting plan;

(b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

(c) a residential schedule specifying the periods of time during which the child will reside with each parent, including provisions for holidays, birthdays of family members, vacations, and other special occasions;

(d) finances to provide for the child's needs;

(e) any other factors affecting the physical and emotional health and well-being of the child;

(f) periodic review of the parenting plan when requested by either parent or the child or when circumstances arise that are foreseen by the parents as triggering a need for review, such as attainment by the child of a certain age or if a change in the child's residence is necessitated;

(g) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including contempt of court;

(h) allocation of parental decisionmaking authority regarding the child's:

(i) education;

(ii) spiritual development; and

(iii) health care and physical growth;

(i) the method by which future disputes concerning the child will be resolved between the parents, other than court action; and

(j) the unique circumstances of the child or the family situation that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

(3) The court may in its discretion order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency; or court action.

(4) Each parent may make decisions regarding the day-to-day care and control of the child while

1 the child is residing with that parent, and either parent may make emergency decisions affecting the
2 child's safety or health. When mutual decisionmaking is designated in the parenting plan but cannot be
3 achieved regarding a particular issue, the parents shall make a good faith effort to resolve the issue
4 through any dispute resolution process provided for in the final parenting plan.

5 (5) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations
6 under the parenting plan are not affected.

7 (6) ~~The~~ At the request of either parent or appropriate party, the court shall order that the
8 parenting plan be sealed except for access by the parents, guardian, or other person having custody of
9 the child."

10
11 **Section 6.** Section 40-4-252, MCA, is amended to read:

12 **"40-4-252. Preliminary declaration of disclosure -- penalty.** (1) Within 60 days of service of a
13 petition for dissolution or nullity of marriage or for legal separation of the parties, each party shall serve
14 on the other party a preliminary declaration of disclosure, executed under penalty of perjury. The parties
15 may, by written stipulation or by oral stipulation made in open court, agree to waive the exchange of or
16 change the time for exchange of preliminary declarations of disclosure.

17 (2) The preliminary declaration of disclosure may not be filed with the court, except on the court's
18 order.

19 (3) The preliminary declaration of disclosure must set forth with sufficient particularity, which a
20 person of reasonable and ordinary intelligence can ascertain, all of the following:

21 (a) the identity of all assets in which the declarant has or may have an interest and all liabilities
22 for which the declarant is or may be liable, regardless of the characterization of an asset or liability; and

23 (b) the declarant's percentage of ownership in each asset and percentage of obligation for each
24 liability when property is not solely owned by one or both of the parties. The preliminary declaration may
25 also set forth the declarant's characterization of each asset or liability.

26 (4) A declarant may amend the declarant's preliminary declaration of disclosure without
27 permission of the court.

28 (5) Along with the preliminary declaration of disclosure, each party shall provide the other party
29 with a completed income and expense declaration unless an income and expense declaration has already
30 been provided and is current and valid.

1 (6) In addition to any other civil or criminal remedy available under law for the commission of
2 perjury, the court may set aside the judgment, or part of the judgment, if the court discovers that a party
3 has committed perjury in the preliminary declaration of disclosure."

4

5 NEW SECTION. Section 7. Effective date. [This act] is effective ~~on passage and approval~~ JULY
6 1, 1999.

7

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN ROBERT C. CLARK, on March 22, 1999 at
8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Diana Wyatt, Vice Chairman (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 251, SB 372, SB 486,
3/15/1999

Executive Action: SB 326-Tabled, SB 232-Be
Concurred in as amended, SB
404-Be Concurred in, SB 416-Be
Concurred in as amended.

HEARING ON SB 251

Sponsor:

Senator Halligan presented SB 251.

{Tape : 1; Side : A; Approx. Time Counter : 32 - 54}

Proponents:

Joan Cassidy, Montana Addiction Services

{Tape : 1; Side : A; Approx. Time Counter : 54 - 130}

EXHIBIT(1)

Robert Throssell, Montana Magistrates Association

{Tape : 1; Side : A; Approx. Time Counter : 130 - 160}

Candace Payne, Rimrock Foundation

{Tape : 1; Side : A; Approx. Time Counter : 160 - 171}

Brenda Nordlund, Dept. of Justice

{Tape : 1; Side : A; Approx. Time Counter : 171 - 188}

Charles Brooks, DUI Task Force

{Tape : 1; Side : A; Approx. Time Counter : 188 - 207}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 207 - 412}

Closing by Sponsor:

Senator Halligan made closing statements.

{Tape : 1; Side : A; Approx. Time Counter : 412 - 451}

HEARING ON SB 372

Sponsor:

Senator Halligan presented SB 372.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 37}

Proponents:

Kerry Newcomer, Child & Family Law Section of State Bar

(Tape : 1; Side : B; Approx. Time Counter : 37 - 108)

Gary Pippen, Montana Association of Clerks of District Court

(Tape : 1; Side : B; Approx. Time Counter : 108 - 115)

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

(Tape : 1; Side : B; Approx. Time Counter : 115 - 178)

Closing by Sponsor:

Senator Halligan made closing statements.

(Tape : 1; Side : B; Approx. Time Counter : 178 - 186)

HEARING ON SB 486

Sponsor:

Senator Halligan presented SB 486.

(Tape : 1; Side : B; Approx. Time Counter : 186 - 285)

Proponents:

Kerry Newcomer, Child & Family Law Section of State Bar

(Tape : 1; Side : B; Approx. Time Counter : 285 - 330)

EXHIBIT(2)

EXHIBIT(3)

Betty Waddell, Montana Association of Churches

(Tape : 1; Side : B; Approx. Time Counter : 330 - 384)

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

(Tape : 1; Side : B; Approx. Time Counter : 384 - 550)

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 25, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Bill Eggers (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:

Executive Action: SB 476-Tabled; SB 186-Be
concurrent in as amended, SB

Motion/Vote: REP. YOUNKIN moved that SB 257 BE CONCURRED IN.
Motion carried unanimously.

{Tape : 2; Side : B; Approx. Time Counter : 133 - 550}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 113}

EXECUTIVE ACTION ON SB 258

Motion: REP. YOUNKIN moved that SB 258 BE CONCURRED IN.

Motion/Vote: REP. WYATT moved that SB 258 BE AMENDED. Motion carried 19-1 with Jore voting no.

Motion: REP. YOUNKIN moved that SB 258 BE CONCURRED IN AS AMENDED.

Motion: REP. SHOCKLEY moved that SB 258 BE AMENDED.

Motion/Vote: REP. SHOCKLEY moved SB 258-OFFERS SUBSTITUTE AMENDMENT. Motion carried unanimously.

Motion: REP. GALLUS moved that SB 258 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. NOENNIG moved that SB 258 BE AMENDED. Motion carried unanimously.

Motion/Vote: REP. ANDERSON moved that SB 258 BE CONCURRED IN AS AMENDED. Motion carried 18-2 with Jore and Molnar voting no.

{Tape : 3; Side : A; Approx. Time Counter : 113 - 414}

EXECUTIVE ACTION ON SB 372

Motion: REP. YOUNKIN moved that SB 372 BE CONCURRED IN.

Motion/Vote: REP. ANDERSON moved that SB 372 BE AMENDED. Motion carried unanimously.

EXHIBIT(6)

Motion: REP. AHNER moved that SB 372 BE CONCURRED IN AS AMENDED.

Motion/Vote: REP. ANDERSON moved that SB 372 BE AMENDED. Motion failed 8-12 with P. Clark, Eggers, Facey, Gallus, Gutsche, Hurdle, Kitzenberg, Noennig, Shockley, Soft, Williams, and Wyatt voting no.

Motion/Vote: REP. AHNER moved that SB 372 BE CONCURRED IN AS AMENDED. Motion carried 14-6 with R. Clark, Curtiss, Jore, McGee, Molnar, and Soft voting no.

{Tape : 3; Side : A; Approx. Time Counter : 414 - 550}

{Tape : 3; Side : B; Approx. Time Counter : 0 - 193}

EXECUTIVE ACTION ON SB 472

Motion: REP. AHNER moved that SB 472 BE CONCURRED IN.

Amendments to Senate Bill No. 372
3rd Reading Copy

EXHIBIT 6
DATE 3/25/99
SB 372

Requested by Senator Mike Halligan

For the House Judiciary Committee

Prepared by John MacMaster
March 23, 1999 (2:06PM)

1. Page 7, line 26.

Strike: the first "L"

Insert: "and:"

(a) there are no children from the relationship born
before or during the marriage or adopted by the parties during
the marriage; or

(b)

Strike: the second "L"

- END -

HOUSE OF REPRESENTATIVE ROLL CALL

JUDICIARY

COMMITTEE

DATE 3/25/99

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair	/		
Dan McGee, vice chair	/		
Diana Wyatt, vice chair	/		
Chris Ahner	/		
Shiell Anderson	/		
Paul Clark	/		
Aubyn A. Curtiss	/		
Bill Eggers			/
Tom Facey	/		
Steven Gallus	/		
Gail Gutscho	/		
Joan Hurdle	/		
Rick Jore	/		
Sam Kitzenberg	/		
Brad Molnar	/		
Mark Noenning	/		
Jim Shockley	/		
Loren Soft	/		
Carol Williams	/		
Cindy Younkin	/		



HOUSE STANDING COMMITTEE REPORT

March 25, 1999

Page 1 of 1

Mr. Speaker:

We, your committee on Judiciary report that Senate Bill 372 (third reading copy -- blue) be concurred in as amended.

Signed: Robert C. Clark
Representative Robert C. Clark, Chair

To be carried by Representative Joan Hurdle

And, that such amendments read:

1. Page 7, line 26.

Strike: the first "L"

Insert: "and:

(a) there are no children from the relationship born before or during the marriage or adopted by the parties during the marriage; or

(b) "

Strike: the second "L"

- END -

Committee Vote:
Yes 14, No 6.

671431SC.ham

3/25
me

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

HOUSE JUDICIARY

X ~~SUB~~ COMMITTEE

DATE

3/25/99

BILL NO.

NUMBER

MOTION:

SB 372

Anderson
Fuller

NAME	AYE	NO
ROBERT CLARK, CHAIRMAN	/	
DAN MC GEE, VICE CHAIR	/	
DIANA WYATT, VICE CHAIR		/
CHAIR AHNER	/	
SHEILL ANDERSON	/	
PAUL CLARK		/
AUBYN CURTISS	/	
BILL EGGERS		/
TOM FACEY	/	
STEVE GALLUS	/	
GAIL GUTSCHE	/	
JOAN HURDLE	/	
RICK JORE	/	
SAM KITZENBERG	/	
BRAD MOLNAR	/	
MAKR NOENNING	/	
JIM SHOCKLEY	/	
LOREN SOFT	/	
CAROL WILLIAMS	/	
CINDY YOUNKIN	/	
	8	12

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

HOUSE JUDICIARY ~~HOUSE~~ COMMITTEE
 DATE 3/25 BILL NO. _____ NUMBER _____

MOTION: SB372 Do Concur as Amended Passed

NAME	AYE	NO
ROBERT CLARK, CHAIRMAN		✓
DAN MC GEE, VICE CHAIR		✓
DIANA WYATT, VICE CHAIR	✓	
CHAIR AHNER	✓	
SHEILL ANDERSON	✓	
PAUL CLAKR	✓	
AUBYN CURTISS		✓
BILL EGGERS	✓	
TOM FACEY	✓	
STEVE GALLUS	✓	
GAIL GUTSCHE	✓	
JOAN HURDLE	✓	
RICK JORE		✓
SAM KITZENBERG	✓	
BRAD MOLNAR		✓
MAKR NOENNING	✓	
JIM SHOCKLEY	✓	
LOREN SOFT		✓
CAROL WILLIAMS	✓	
CINDY YOUNKIN	✓	
	14	6



AN ACT REVISING CERTAIN LAWS RELATING TO TERMINATION OF MARRIAGE, SEPARATION, AND CHILD CUSTODY; PROVIDING THAT FEES FOR FILING AN AMENDMENT TO FINAL PARENTING PLANS MAY NOT BE COLLECTED IF THE AMENDMENT IS NOT CONTESTED; PROVIDING THAT THE CLERK OF COURT NEED NOT KEEP SOCIAL SECURITY NUMBERS CONFIDENTIAL, UNLESS REQUESTED; PROVIDING THAT PARENTING PLANS BE KEPT CONFIDENTIAL ONLY UPON REQUEST; REVISING ASSET CRITERIA FOR SUMMARY DISSOLUTION PROCEDURES; ALLOWING PARTIES TO WAIVE EXCHANGE OF PRELIMINARY DISCLOSURE STATEMENTS; AMENDING SECTIONS 25-1-201, 40-4-105, 40-4-130, 40-4-204, 40-4-234, AND 40-4-252, MCA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. (Temporary) Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

- (a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, ~~a fee of \$150~~; for filing a petition for legal separation, ~~a fee of \$150~~; and for filing a petition for a contested amendment of a final parenting plan, ~~a fee of \$120~~;
- (b) from each defendant or respondent, on appearance, \$60;
- (c) on the entry of judgment, from the prevailing party, \$45;
- (d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;
- (e) for each certificate, with seal, \$2;
- (f) for oath and jurat, with seal, \$1;
- (g) for a search of court records, 50 cents for each year searched, not to exceed a total of \$25;
- (h) for filing and docketing a transcript of judgment or transcript of the docket from all other

courts, the fee for entry of judgment provided for in subsection (1)(c);

- (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- (j) for transmission of records or files or transfer of a case to another court, \$5;
- (k) for filing and entering papers received by transfer from other courts, \$10;
- (l) for issuing a marriage license, \$30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

- (o) for filing a declaration of marriage without solemnization, \$30;
- (p) for filing a motion for substitution of a judge, \$100;
- (q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) through (10), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state general fund.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$23.60 must be deposited in and credited to the state general fund and \$6.40 must be deposited in and credited to the county general fund.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$75 must be deposited in the state general fund, \$5 must be deposited in the children's trust fund account established by 41-3-702, \$30 must be deposited in the partner and family member assault intervention and treatment fund established by 40-15-110, and \$20 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

- (i) at the commencement of each action or proceeding and for filing a complaint in intervention,

as provided in subsection (1)(a), \$35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

(iii) on the entry of judgment, as provided in subsection (1)(c), \$15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), \$15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must be remitted to the state general fund.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) (a) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

(b) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of the district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(10) The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q), and \$5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for

district court operations. (Terminates June 30, 1999--sec. 14, Ch. 484, L. 1997.)

25-1-201. (Effective July 1, 1999) Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, \$80; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for dissolution of marriage, ~~a fee of~~ \$120; for filing a petition for legal separation, ~~a fee of~~ \$120; and for filing a petition for a contested amendment of a final parenting plan, ~~a fee of~~ \$120;

(b) from each defendant or respondent, on appearance, \$60;

(c) on the entry of judgment, from the prevailing party, \$45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, \$2;

(f) for oath and jurat, with seal, \$1;

(g) for a search of court records, 50 cents for each year searched, not to exceed a total of \$25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

(j) for transmission of records or files or transfer of a case to another court, \$5;

(k) for filing and entering papers received by transfer from other courts, \$10;

(l) for issuing a marriage license, \$30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, \$70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, \$55;

(o) for filing a declaration of marriage without solemnization, \$30;

(p) for filing a motion for substitution of a judge, \$100;

(q) for filing a petition for adoption, \$75.

(2) Except as provided in subsections (3) through (10), 32% of all fees collected by the clerk of

the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state general fund.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, \$23.60 must be deposited in and credited to the state general fund and \$6.40 must be deposited in and credited to the county general fund.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, \$75 must be deposited in the state general fund, \$5 must be deposited in the children's trust fund account established by 41-3-702, and \$20 must be deposited in and credited to the district court fund. If no district court fund exists, the \$20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention, as provided in subsection (1)(a), \$35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), \$25;

(iii) on the entry of judgment, as provided in subsection (1)(c), \$15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), \$15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must be remitted to the state general fund.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund \$20 of each

fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) (a) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

(b) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of the district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(10) The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 \$70 of the filing fee required in subsection (1)(q), and \$5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations."

Section 2. Section 40-4-105, MCA, is amended to read:

"40-4-105. (Bracketed language terminates on occurrence of contingency or July 1, 1999)
Procedure -- commencement -- pleadings -- abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably broken and must set forth:

(a) the age, occupation, and residence of each party and the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) there is serious marital discord that adversely affects the attitude of one or both of the parties

towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support of the children and maintenance of a spouse;

(f) a proposed parenting plan, if applicable; and

(g) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

[(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. The At the request of a person subject to a decree of dissolution or a support order, the recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency or July 1, 1999--sec. 104, Ch. 552, L. 1997.)"

Section 3. Section 40-4-130, MCA, is amended to read:

"40-4-130. Summary dissolution -- conditions necessary at commencement of proceedings. A marriage may be dissolved by the summary dissolution procedure specified in 40-4-130 through 40-4-136 if all of the following conditions exist on the date the proceeding is commenced:

(1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both parties agree that the marriage should be dissolved.

~~(3) There are no children from the relationship born before or during the marriage or adopted by~~

~~the parties during the marriage, and the wife is not pregnant.~~

(3) The wife is not pregnant and:

(a) there are no children from the relationship born before or during the marriage or adopted by the parties during the marriage; or

(b) the parties have executed an agreed-upon parenting plan and the child support and medical support have been determined by judicial or administrative order for all children from the relationship born before or during the marriage or adopted by the parties during the marriage.

(4) (a) Except as provided in subsection (4)(b), neither party has any interest in real property.

(b) The limitation of subsection (4)(a) does not apply to the lease of a residence occupied by either party if the lease does not include an option to purchase and if it terminates within 1 year from the date of the filing of the petition.

(5) There are no unpaid, unsecured obligations in excess of ~~\$4,000~~ \$8,000 incurred by either or both of the parties after the date of their marriage, ~~excluding the amount of any unpaid obligations with respect to a motor vehicle with a rated carrying load in persons and property of 1 ton or less.~~

(6) The total fair market value of ~~property assets, excluding all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less~~ secured obligations, is less than ~~\$13,000~~ \$25,000, and neither party has separate property assets in excess of ~~\$13,000, excluding all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less.~~

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities and have ~~duly~~ executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any right to maintenance.

(9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the dissolution.

(10) The parties have read and state that they understand the contents of the summary dissolution brochure provided for in 40-4-136.

(11) The parties desire that the court dissolve the marriage."

Section 4. Section 40-4-204, MCA, is amended to read:

"40-4-204. ~~(Bracketed language terminates on occurrence of contingency or July 1, 1999)~~ Child support -- orders to address health insurance -- withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

- (a) the financial resources of the child;**
- (b) the financial resources of the parents;**
- (c) the standard of living that the child would have enjoyed had the marriage not been dissolved;**
- (d) the physical and emotional condition of the child and the child's educational and medical needs;**
- (e) the age of the child;**
- (f) the cost of day care for the child;**
- (g) any parenting plan that is ordered or decided upon; and**
- (h) the needs of any person, other than the child, whom either parent is legally obligated to**

support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount.

A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties

have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(d) If an obligor is exempted from paying support through income withholding, the support order

must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

(i) the party's identity, residential and mailing addresses, telephone number, [social security number,] and driver's license number;

(ii) the name, address, and telephone number of the party's employer; and

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(c) The order must also require that in any subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to be paid, without need for

further court order:

- (i) to the person with whom the child resides by legal order;
- (ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;
- (iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect the payment; or

- (iv) to the court for the benefit of the minor child.

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

(c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the obligee under a child support order and is obligated to pay a contribution for the same child under 41-3-406, 41-5-1304, or 41-5-1512, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613. ~~(Bracketed language terminates on occurrence of contingency or July 1, 1999 sec. 104, Ch. 552, L. 1997.)~~"

Section 5. Section 40-4-234, MCA, is amended to read:

"40-4-234. **Final parenting plan criteria.** (1) In every dissolution proceeding, proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation proceeding that involves a child, each parent or both parents jointly shall submit to the court, in good faith, a proposed final plan for parenting the child, which may include the allocation of parenting functions. A final parenting plan must be incorporated into any final decree or amended decree, including cases of dissolution by default. As used in this section, parenting functions means those aspects of the parent-child relationship

in which the parent makes decisions and performs functions necessary for the care and growth of the child, which may include:

- (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;
- (b) attending to the daily needs of the child, such as feeding, physical care, development, and grooming, supervision, spiritual growth and development, health care, day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
- (c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;
- (d) ensuring the interactions and interrelationship of the child with the child's parents and siblings and with any other person who significantly affects the child's best interest; and
- (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances.

(2) Based on the best interest of the child, a final parenting plan may include, at a minimum, provisions for:

- (a) designation of a parent as custodian of the child, solely for the purposes of all other state and federal statutes that require a designation or determination of custody, but the designation may not affect either parent's rights and responsibilities under the parenting plan;
- (b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;
- (c) a residential schedule specifying the periods of time during which the child will reside with each parent, including provisions for holidays, birthdays of family members, vacations, and other special occasions;
- (d) finances to provide for the child's needs;
- (e) any other factors affecting the physical and emotional health and well-being of the child;
- (f) periodic review of the parenting plan when requested by either parent or the child or when circumstances arise that are foreseen by the parents as triggering a need for review, such as attainment by the child of a certain age or if a change in the child's residence is necessitated;
- (g) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including

contempt of court;

(h) allocation of parental decisionmaking authority regarding the child's:

(i) education;

(ii) spiritual development; and

(iii) health care and physical growth;

(i) the method by which future disputes concerning the child will be resolved between the parents, other than court action; and

(j) the unique circumstances of the child or the family situation that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

(3) The court may in its discretion order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, or court action.

(4) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, and either parent may make emergency decisions affecting the child's safety or health. When mutual decisionmaking is designated in the parenting plan but cannot be achieved regarding a particular issue, the parents shall make a good faith effort to resolve the issue through any dispute resolution process provided for in the final parenting plan.

(5) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.

(6) The At the request of either parent or appropriate party, the court shall order that the parenting plan be sealed except for access by the parents, guardian, or other person having custody of the child."

Section 6. Section 40-4-252, MCA, is amended to read:

"40-4-252. Preliminary declaration of disclosure -- penalty. (1) Within 60 days of service of a petition for dissolution or nullity of marriage or for legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury. The parties may, by written stipulation or by oral stipulation made in open court, agree to waive the exchange of or

change the time for exchange of preliminary declarations of disclosure.

(2) The preliminary declaration of disclosure may not be filed with the court, except on the court's order.

(3) The preliminary declaration of disclosure must set forth with sufficient particularity, which a person of reasonable and ordinary intelligence can ascertain, all of the following:

(a) the identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of an asset or liability; and

(b) the declarant's percentage of ownership in each asset and percentage of obligation for each liability when property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(4) A declarant may amend the declarant's preliminary declaration of disclosure without permission of the court.

(5) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

(6) In addition to any other civil or criminal remedy available under law for the commission of perjury, the court may set aside the judgment, or part of the judgment, if the court discovers that a party has committed perjury in the preliminary declaration of disclosure."

Section 7. Effective date. [This act] is effective July 1, 1999.

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